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IN THE

Supreme Court of the United States

ELK GROVE UNIFIED SCHOOL DISTRICT AND DAVID W. GORDON, Superintendent,

Petitioners,

vs.

MICHAEL A. NEWDOW, *et al.*

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Brief of Amicus Curiae of Focus on the Family, Family Research Council, and Alliance Defense Fund Supporting Petitioners

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INTEREST OF AMICI IN THIS CASE[1]

FOCUS ON THE FAMILY is a nonprofit organization founded by James C. Dobson, Ph.D, an internationally recognized expert on the family. Focus on the Family broadcasts syndicated radio programs heard daily on more than three thousand radio stations in twelve languages in more than ninety-five countries. These programs are heard by more than five million people. Focus on the Family actively promotes freedom of speech and religious expression as part of its ministry to families. Focus on the Family has participated as *amicus curiae* in numerous cases before this Court.

FAMILY RESEARCH COUNCIL is a nonprofit research and educational corporation headquartered in Washington, D.C. It exists to affirm and promote the traditional family and the Judeo-Christian principles upon which this country is built. Family Research Council provides resources and guidance for citizens concerned about national policy as it relates to cultural morality.

ALLIANCE DEFENSE FUND ("ADF") is a not-for-profit public interest organization that provides strategic planning, training, and funding to attorneys and organizations regarding religious civil liberties. ADF and its allied organizations represent hundreds of thousands of Americans who have a right to religious and patriotic expression in public schools and

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[1]All parties have consented to the submission of this brief through letters filed with the Clerk of the Court. No portion of this brief was authored by counsel for a party, and no person or entity other than Amici or their counsel made a monetary contribution to the preparation or submission of this brief.

elsewhere. Its membership includes hundreds of lawyers and numerous public interest law firms. ADF has advocated for the rights of Americans under the First Amendment in hundreds of significant cases throughout the United States, having been directly or indirectly involved in at least 500 cases and legal matters, including cases before this Court such as *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001), *Mitchell v. Helms*, 530 U.S. 793 (2000), *Troxel v. Granville*, 530 U.S. 57 (2000), *Agostini v. Felton*, 521 U.S. 203 (1997), *Dale v. Boy Scouts of America*, 530 U.S. 640 (2000), *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), *National Endowment for the Arts v. Finley*, 524 U.S. 569 (1998), *Vacco v. Quill*, 521 U.S. 793 (1997), and *Washington v. Glucksgerg*, 521 U.S. 702 (1997).

SUMMARY OF ARGUMENT

Voluntary recitation of the Pledge of Allegiance by public school students is a patriotic exercise that acknowledges the religious principles upon which this country was founded. Inclusion of the phrase "under God" in the Pledge, simply recognizes the historical fact that our founders declared independence and established this nation based on principles that transcend man made laws. The Pledge is not a prayer or any other type of religious exercise. A public school district policy that requires teachers to lead willing students in reciting the Pledge of Allegiance is therefore constitutional under all of the tests this Court uses to analyze Establishment Clause claims.

ARGUMENT

The question in this case is whether a teacher can lead willing students in a pledge that acknowledges the historical role of religion in our country without violating the Establishment Clause. The answer is "yes," whether this Court utilizes the *Lemon* test, the Endorsement test, the Coercion test,

or the historical test. The Ninth Circuit Court of Appeals opinion finding an Establishment Clause violation must therefore be vacated.

I. ENCOURAGING STUDENTS TO ACKNOWLEDGE OUR COUNTRY'S RELIGIOUS HERITAGE PASSES ALL THREE PRONGS OF THE *LEMON* TEST.

This Court most often uses the Establishment Clause analysis set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), which states that government conduct (1) must have a secular purpose, (2) must have a principal or primary effect that neither advances or inhibits religion, and (3) must not foster excessive government entanglement with religion. *Id.* at 612-13. The government conduct in this case passes every prong of the *Lemon* test.

A. Recitation of the Pledge has a Secular Purpose of Encouraging Patriotism and Acknowledging Our Religious Heritage.

Recitation of the Pledge of Allegiance has a manifestly secular purpose of encouraging patriotism among California public school students.

> The California Education Code requires that public schools begin each school day with "appropriate patriotic exercises" and that "[t]he giving of the Pledge of Allegiance to the Flag of the United States of America shall satisfy" this requirement. Cal. Educ.Code § 52720 (1989) (hereinafter "California statute"). To implement the California statute, the school district that Newdow's daughter attends has promulgated a policy that states, in pertinent part: "Each elementary school class [shall] recite the pledge of allegiance to the flag once each day."

Newdow v. U.S. Congress, 328 F.3d 466, 482-83 (9th Cir. 2003) (footnote omitted).

The two words "under God" within the Pledge do not alter this fundamental purpose. This Court has already observed that these words constitutionally acknowledge our nation's religious heritage in *Lynch v. Donnelly*, 465 U.S. 668 (1984).

The majority in *Lynch* (authored by then Chief Justice Burger and joined by Justices White, Powell, Rehnquist, and O'Connor) found that a city's display of a creche had the secular purpose of depicting the historical origins of Christmas. "The display is sponsored by the city to celebrate the Holiday and to depict the origins of that Holiday. These are legitimate secular purposes." *Id.* at 681. In so holding, this Court specifically referred to the Pledge as a constitutional acknowledgment of our country's religious heritage.

> Other examples of reference to our religious heritage are found in the statutorily prescribed national motto "In God We Trust," 36 U. S. C. § 186, which Congress and the President mandated for our currency, see 31 U. S. C. § 5112(d)(1) (1982 ed.), ***and in the language "One nation under God," as part of the Pledge of Allegiance to the American flag. That pledge is recited by many thousands of public school children -- and adults -- every year.***

Id. at 676 (emphasis added).[2]

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[2]Justice O'Connor has noted that the Pledge also has the following secular purpose: "[T]he words 'under God' in the Pledge ... serve as an acknowledgment of religion with 'the legitimate secular purposes of solemnizing public occasions, [and] expressing confidence in the future.' " *Wallace v. Jaffree*, 472 U.S. 38, 78 n.5 (1985) (*quoting Lynch*, 465 U.S. at 693 (O'Connor, J., concurring)).

Thus, recitation of the Pledge by public school students clearly has a secular purpose of encouraging patriotism and acknowledging our country's religious heritage.

B. The Primary Effect of Reciting the Pledge is Patriotism.

The primary effect of reciting the Pledge of Allegiance is reinforcing the students' allegiance to the United States of America. Adding the phrase "under God" to the Pledge recognizes the historical fact that our founders thought it important to refer to God when forming the nation.

This Court recognized the significance of religion in the history of this country in *Lynch*.

> There is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789. . . .Our history is replete with official references to the value and invocation of Divine guidance in deliberations and pronouncements of the Founding Fathers and contemporary leaders. Beginning in the early colonial period long before Independence, a day of Thanksgiving was celebrated as a religious holiday to give thanks for the bounties of Nature as gifts from God. President Washington and his successors proclaimed Thanksgiving, with all its religious overtones, a day of national celebration and Congress made it a National Holiday more than a century ago. Ch. 167, 16 Stat. 168. That holiday has not lost its theme of expressing thanks for Divine aid any more than has Christmas lost its religious significance.

at 674-75 (footnotes omitted).

Encouraging students to recite the Pledge or other official documents that acknowledge our religious heritage does not have the principle or primary effect of advancing religion. This Court long ago recognized the distinction between state-ordained prayer and patriotic exercises that simply acknowledge God in *Engel v. Vitale,* 370 U.S. 421 (1962).

> There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State of New York has sponsored in this instance.

Id. at 435 n.21. Therefore, encouraging voluntary recitation of the Pledge by public students does not have the primary effect of advancing religion.

However, prohibiting teachers from leading students in reciting the Pledge could very well have the opposite effect. The second prong of the *Lemon* test also prohibits government acts that have the primary effect of inhibiting religion. Censoring our religious heritage from public schools "would demonstrate not neutrality but hostility toward religion." *Bd. of Education v. Mergens,* 496 U.S. 226, 248 (1990).

For instance, in *Good News Club v. Milford Central School,* 533 U.S. 98 (2001), this Court found that allowing a student Bible Club to meet at an elementary school did not violate the Establishment Clause.

> [W]e cannot say the danger that children would misperceive the endorsement of religion is any greater than the danger that they would perceive a hostility toward the religious viewpoint if the Club were excluded from the public forum.

Id. at 119. Judge O'Scannlain's dissent from denial of rehearing en banc in this case aptly summarizes this concern with regard to the Pledge.

> [Prohibiting the Pledge in schools] confers a favored status on atheism in our public life. In a society with a pervasive public sector, our public schools are a most important means for transmitting ideas and values to future generations. The silence the [panel] majority commands is not neutral--it itself conveys a powerful message, and creates a distorted impression about the place of religion in our national life. The absolute prohibition on any mention of God in our schools creates a bias against religion. The panel majority cannot credibly advance the notion that *Newdow II* is neutral with respect to belief versus non-belief; it affirmatively favors the latter to the former. One wonders, then, does atheism become the default religion protected by the Establishment Clause?

328 F.3d at 481-82 (*citing* Michael W. McConnell, *Religious Freedom at the Crossroads,* 59 U. CHI. L. REV. 115, 189 (1992)). In short, "[t]he Establishment Clause does not license government to treat religion and those who teach or practice it,

simply by virtue of their status as such, as subversive of American ideals and therefore subject to unique disabilities." *McDaniel v. Paty,* 435 U.S. 618, 641 (1978) (Brennan, J., concurring).

C. Acknowledging the Historical Fact of Our Religious Heritage Does Not Cause Excessive Entanglement.

Reciting a Pledge that acknowledges our country's religious heritage does not foster an excessive governmental entanglement with religion. This prong arises out of a concern that government could inhibit the free exercise of religion by becoming involved in the inner workings of religious organizations. *Lemon,* 403 U.S. at 615 (warning against "programs, whose very nature is apt to entangle the state in details of administration"). No such concern can even be articulated in this case. Recitation of the Pledge has absolutely nothing to do with the administration of a particular religion, or religions in general.

Encouraging students to recite a patriotic Pledge that acknowledges our religious heritage does not result in excessive entanglement. Moreover, it has a secular purpose, and does not have the primary effect of advancing or inhibiting religion. The *Lemon* test is satisfied in this case. This Court noted in *Lemon* that "[o]ur prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable." *Id.* at 614. Recitation of the Pledge by public school students is a constitutional recognition of this inevitable relationship between government and religion in our society.

II. ENCOURAGING VOLUNTARY RECITATION OF THE PLEDGE DOES NOT CREATE AN ENDORSEMENT OF RELIGION.

As articulated by Justice O'Connor, the Endorsement Test modifies the first and second prongs of the *Lemon* test.

> The purpose prong of the Lemon test asks whether government's actual purpose is to endorse or disapprove of religion. The effect prong asks whether, irrespective of government's actual purpose, the practice under review in fact conveys a message of endorsement or disapproval.

Lynch at 690 (O'Connor, J., concurring). It has already been demonstrated that the purpose of teachers leading students in recitation of the Pledge is to encourage patriotism. The fact that the Pledge acknowledges our religious heritage does not change this purpose. Recitation of the pledge does not have the purpose of endorsing or disapproving of religion.

Under the Endorsement analysis, *Lemon's* primary effect prong is slightly modified to ask whether the government action (e.g., leading students in recitation of the Pledge), conveys a message of endorsement or disapproval of religion. Endorsement of religion is conveyed if a "reasonably informed observer" of the governmental action would perceive it as such. *Capital Square Review Bd. v. Pinette,* 515 U.S. 753, 773 (1995) (O'Connor, J., concurring). It is well established that the mere presence of some religious element cannot reasonably be considered an endorsement of religion. As this Court has stated, "[f]ocus exclusively on the religious component of any activity would inevitably lead to its invalidation under the Establishment Clause." *Lynch*, 465 U.S. at 680.

It is vital to remember that a reasonably informed observer "must be deemed aware of the history and context" of he government action in question. *Zelman v. Simmons-Harris,* 536 U.S. 639, 655 (2002) (quotation marks omitted). In this case, that means that the reasonable observer must be deemed

aware that our foundational and other official government documents, songs, mottos, etc., are replete with references to God.

For example, the Constitution itself refers to the "Year of our Lord." U.S. Const. art. VII. The Declaration of Independence opens with an appeal to "the laws of Nature and of Nature's God," before affirming that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights." In the Gettysburg Address, President Lincoln declared "that this Nation, under God, shall have a new birth of freedom--and that Government of the people, by the people, for the people, shall not perish from the earth." Our National Motto, is "In God we trust." 36 U.S.C. § 302.

We also have adopted the *Star-Spangled Banner* as our national anthem, 36 U.S.C. § 301(a), which states:

> Blest with victory and peace, may the heaven-rescued land, Praise the Power that hath made and preserved us a nation. Then conquer we must, when our cause is just, And this be our motto: "In God is our trust."

None of these governmental references to God have ever been held to be unconstitutional endorsements of religion. In *Lynch*, Justice O'Connor observed that government acknowledgments of religion such as printing "In God We Trust" on coins, and opening court sessions with "God Save The United States," could not be reasonably perceived as a government endorsement of religion. *Lynch*, 465 U.S. at 693 (O'Connor, J., concurring).

Justice Brennan, one of the Court's most noted separationists, stated:

> [G]overnment cannot be completely prohibited from recognizing in its public actions the religious beliefs and practices of the American people as an aspect of our national history and culture. [S]uch practices as the designation of "In God We Trust" as our national motto, or the references to God contained in the Pledge of Allegiance to the flag can best be understood . . . as a form of "ceremonial deism" protected from Establishment Clause scrutiny. . . . The practices by which the government has long acknowledged religion are therefore probably necessary to serve certain secular functions. . . .

Lynch, 465 U.S. at 716-717 (Brennan, J., dissenting) (citations omitted); *see also Abington School Dist. v. Schempp*, 374 U.S. 203, 303 (1963) (Justice Brennan opined that the national motto was "deeply interwoven into the fabric of our civil polity"); *County of Allegheny v. ACLU*, 492 U.S. 573, 674 (1989) (Kennedy, J., White, J., Scalia, J., Rehnquist, J., dissenting) (arguing that the national motto is perfectly compatible with the Establishment Clause).

Armed with this information, a reasonable observer would know that encouraging students to recite the Pledge, cannot be deemed an endorsement of religion.[3] Its reference to "one

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[3] "If legislative prayer based upon the Judeo-Christian tradition is permissible under *Marsh v. Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L.Ed.2d 1019 (1983), and a Christmas nativity scene erected by a city government is permissible under *Lynch v. Donnelly*, 465 U.S. 668, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984), then certainly the less specific reference to God in the Pledge of Allegiance cannot amount to an establishment of religion." *Sherman v. Community Consolidated School District 21 of Wheeling Township*, 980 F.2d 437, 448 (7th Cir. 1992).

nation under God" does the same thing the examples referenced above do: acknowledge the fact that religion is an important part of our country's history and culture.

III ENCOURAGING STUDENTS TO VOLUNTARILY RECITE THE PLEDGE DOES NOT COERCE THEM TO PARTICIPATE IN A RELIGIOUS EXERCISE.

Permitting teachers to lead students in recitation of the Pledge does not coerce the students to participate in a religious exercise. In *Lee v. Weisman*, 505 U.S. 577, 598-99 (1992), this Court held that a prayer at a middle school graduation was a violation of the Establishment Clause because students were coerced into participating in an "explicit religious exercise."

In *Lee*, Justice Kennedy stated that "the sole question presented is whether a religious exercise may be conducted at a graduation ceremony in circumstances where, as we have found, young graduates who object are induced to conform." 505 U.S. at 599. The majority in *Lee* clearly limited its holding to the context of public school prayer and other religious exercises.

> Time and again the Court went out of its way to stress the nature of the exercise, writing that prayer was "an overt religious exercise," *id.* at 588, and that "prayer exercises in public schools carry a particular risk of indirect coercion." *Id.* at 592. The practice was unconstitutional because "the State has in every practical sense compelled attendance and participation in an explicit religious exercise at an event of singular importance to every student." *Id.* at 598. . . . [T]he Court in *Lee* took pains to stress the confines of its holding, concluding that "[w]e do not hold that every state action implicating religion is invalid if one or a few citizens find it offensive," *id.* at 597, and that "[a] relentless and all-pervasive attempt to exclude religion from every aspect of public life could itself become inconsistent with the Constitution." *Id.* at 598.

Newdow, 328 F.3d at 476-77 (O'Scannlain, J., dissenting from denial of rehearing *en banc*). Furthermore, "[n]o court state or federal, has *ever* held, even now, that the Supreme Court's school prayer cases apply outside a context of state-sanctioned formal religious observances." *Id.* For example, this Court applied the *Lee* Coercion Test to prayer at high school football games in *Sante Fe v. Doe*, 530 U.S. 290, (2000), and held that "the delivery of a pregame prayer has the improper effect of coercing those present to participate in an ***act of religious worship***." *Id.* at 312 (emphasis added).

The Pledge's acknowledgment of the historical importance of religion in our country can hardly amount to a religious exercise or observance. This case is not about school prayer, an overtly religious activity; it is about reciting the Pledge of Allegiance, an expressly patriotic activity. Students objecting to this patriotic exercise are not required to participate. *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943). But nothing in *Barnette* requires teachers to refrain from leading students in the Pledge merely because there may be those present who object to reciting it themselves.

The coercion test found suitable by this Court for the expressly limited facts of the school prayer and other religious exercise cases simply does not apply here. Reciting the Pledge is not a religious exercise like the prayers in *Lee* and *Sante Fe*.

IV. HISTORY OF GOVERNMENT ACKNOWLEDGING OUR RELIGIOUS HERITAGE AVOIDS ESTABLISHING A RELIGION.

In *Marsh v. Chambers*, 463 U.S. 783 (1983), this Court held that recitation of nondenominational prayers by a Presbyterian minister at the opening of the Nebraska state legislature did not violate the Establishment Clause. Writing for the majority, Chief Justice Burger emphasized that the practice was not unconstitutional because it was well grounded in United States history. "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country." *Id.* at 786. "Clearly the men who wrote the First Amendment Religion Clauses did not view paid legislative chaplains and opening prayers as a violation of that Amendment, for the practice of opening sessions with prayer has continued without interruption ever since that early session of Congress." *Id.* at 788.

In *Lynch v. Donnelly*, after a lengthy discussion of this country's religious heritage, Chief Justice Burger noted that "history may help explain why the court consistently has declined to take a rigid, absolutist view of the Establishment Clause. We have refused 'to construe the Religion Clauses with a literalness that would undermine the ultimate constitutional objective as illuminated by history.'" 465 U.S. at 678 (joined by Rehnquist, J., O'Connor, J. concurring), citing *Waltz v. Tax Comm'n*, 397 U.S. 664, 671 (1970).

In *County of Allegheny v. ACLU*, 492 U.S. 573, 655-656 (1989), Justice Kennedy, joined in his concurring and dissenting opinion by Justices Rehnquist, White, and Scalia, explained that certain government practices that advance religion have not been found to violate the Establishment Clause because they are "ensconced in the safety of national tradition." *Id.* at 662. "Noncoercive government action within the realm of flexible accommodation or passive acknowledgment of existing symbols does not violate the Establishment Clause unless it benefits religion in a way more direct and more substantial than practices that are accepted in our national heritage." *Id.* at 662-663.

Under the historical analysis set forth *Marsh*, *Lynch*, and *Allegheny*, teacher-led recitation of the Pledge in public schools does not violate the Establishment Clause. The phrase "under God" reflects the historical fact that this country was founded upon principles derived from our religious heritage.

For instance, our Declaration of Independence claims the right to "dissolve the political bands" with England based on "the Laws of Nature and of Nature's God." It also states that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights." Those signing the document "appeal[ed] to the Supreme Judge of the world to rectify their intentions."

Early legislation indicates that the same legislators who voted to add the Establishment Clause to the Constitution, acknowledged the importance of religion to our way of life.

> [O]n the same day that Madison proposed his wording for the First Amendment, Congress re-enacted the Northwest Territory Ordinance, which provided that religion, morality and knowledge were necessary for "good government and the happiness of mankind." 1 Stat. 50 (1789). In addition, the day the House of Representatives adopted the First Amendment, a resolution passed later that day asked President Washington to issue a Thanksgiving Day proclamation that would offer an opportunity to all citizens to give God their sincere thanks for their many blessings. 1 Annals of Cong. 914 (1789).

Rena M. Bila, Note, *The Establishment Clause: a Constitutional Permission Slip for Religion in Public Education*, 60 BROOK. L. REV. 1535, 1547 (1995) (footnotes omitted and citations inserted). As previously shown, our government also

acknowledges our religious heritage in the Constitution, our National Motto, and our National Anthem. *Infra* at 10.

United States Presidents have a long tradition of acknowledging religion in public speeches. For instance George Washington chose the occasion of his farewell to public life to address the importance of religion to American society:

> Of all the dispositions and habits which lead to political prosperity, [r]eligion and [m]orality are indispensable supports. . . . Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

George Washington, *Farewell Address, in* 4 *Annals of Cong.* 2876 (1796). Indeed, during our presidential inauguration ceremonies, Presidents customarily take the oath of office with their hand on the Bible. Virtually every President in the past thirty years has closed his speeches to the nation with the words "God bless America."

Perhaps most compelling is the fact that the phrase "under God" is a direct quote from Abraham Lincoln's Gettysburg Address, delivered in his official capacity as the President: "[T]hat we here highly resolve that these dead shall not have died in vain, that this nation under God shall have a new birth of freedom, and that government of the people, by the people, for the people shall not perish from the earth." *Gettysburg Address* (1863).

Removing the phrase "under God" would constitute an absurd repudiation of America's heritage. This is especially true when religious references are combined with patriotic or ceremonial expressions long recognized and respected in our nation's history. *Engel v. Vitale,*, 370 U.S. at 435 n.21

(distinguishing between the Regents' Prayer, which was held unconstitutional, and patriotic or ceremonial expressions, which are constitutionally permissible). As Justice Douglas succinctly observed in *Zorach v. Clauson*, 343 U.S. 306, 313-314 (1952): "We are a religious people whose institutions presuppose a Supreme Being."

"*Marsh* stands for the proposition, not that specific practices common in 1791 are an exception to the otherwise broad sweep of the Establishment Clause, but rather that the meaning of the Clause is to be determined by reference to historical practices and understandings." *Allegheny*, 492 U.S. at 670 (Kennedy, J., concurring opinion). Historical practice indicates that the words "under God" in the Pledge are an acknowledgment of our religious heritage - not an act of worship or the establishment of a religion. Therefore, it is constitutionally permissible and entirely appropriate for public school teachers to lead willing students in the recitation of the Pledge, including the words "under God."

CONCLUSION.

This Court has already said that public school students may be taught about religion and its relationship to our civilization without violating the Establishment Clause. *Abington*, 374 U.S. at 225 ("one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization"). Leading students in a voluntary Pledge that acknowledges religion's place in our country's heritage is simply one way of teaching this information.

If it is unconstitutional to encourage students to recite the Pledge, then reciting the Gettysburg Address, the Declaration of Independence, or numerous other important historical

If it is unconstitutional to encourage students to recite the Pledge, then reciting the Gettysburg Address, the Declaration of Independence, or numerous other important historical documents, is illegal.[4] The authors of the Establishment Clause never intended such a result, and none of the Establishment Clause tests this Court has created require this conclusion.

A public school policy requiring teachers to lead willing students in reciting the Pledge of Allegiance, which includes the words 'under God,' does not violate the Establishment Clause of the First Amendment. The Court of Appeals opinion finding that it does should therefore be reversed and vacated.

Respectfully Submitted,

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[4] The prospect of students reciting the Declaration of Independence is not hypothetical. Arizona specifically requires daily recitation of the portion of the Declaration of Independence stating: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." ARIZ. REV. STAT. § 15-203(26) (2003).